

(2) A penalty of \$1,000 against the master of a vessel, the commander of an aircraft, the person in charge of a vehicle, or the owner of the vessel, aircraft, or vehicle, or any person directly or indirectly responsible for the discrepancy, if any merchandise described in the manifest is not found on board (a "shortage").

(3)(i) A penalty equal to the lesser of \$10,000 or the domestic value of merchandise found on board of or after having been unladen from a vessel or vehicle, or

(ii) A penalty of \$1,000 (see § 122.161 of this chapter) if merchandise (other than narcotics or marihuana—see § 162.65 of this chapter) is found on board of or after having been unladen from an aircraft—if the merchandise is not included or described in the manifest or does not agree with the manifest (an "overage").

(iii) Unmanifested merchandise belonging to or consigned to the master or crew of the vessel, the commander or crew of the aircraft, or to the owner or person in charge of the vehicle, also shall be subject to forfeiture.

The appropriate of these penalties may be assessed against the master or crew of the vessel, the commander or crew of the aircraft, the person in charge of the vehicle, the owner of the vessel, aircraft, or vehicle, or any person directly or indirectly responsible for the discrepancy.

(c) *Exception.* There is no violation, and consequently no penalty incurred under paragraph (b), in the circumstances described in §§ 4.12(a)(5) and 122.162 of this chapter.

[T.D. 79-160, 44 FR 31958, June 4, 1979, as amended by T.D. 86-59, 51 FR 8490, Mar. 12, 1986; T.D. 88-12, 53 FR 9315, Mar. 22, 1988; T.D. 99-27, 64 FR 13676, Mar. 22, 1999; T.D. 99-64, 64 FR 43267, Aug. 10, 1999]

§ 162.73 Penalties under section 592, Tariff Act of 1930, as amended.

(a) *Maximum penalty without prior disclosure.* If the person concerned has not made a prior disclosure as provided in § 162.74, the monetary penalty under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), shall not exceed:

(1) For fraudulent violations, the domestic value of the merchandise;

(2) For grossly negligent violations,

(i) The lesser of the domestic value of the merchandise or four times the loss of duties, taxes and fees or

(ii) If there is no loss of duties, taxes and fees 40 percent of the dutiable value of the merchandise; and

(3) For negligent violations,

(i) The lesser of the domestic value of the merchandise or two times the loss of duties, taxes and fees or

(ii) If there is no loss of duties, taxes and fees 20 percent of the dutiable value of the merchandise.

(b) *Maximum penalty with prior disclosure.* If the person concerned has made a prior disclosure, the monetary penalty shall not exceed:

(1) For fraudulent violations,

(i) One times the loss of duties, taxes and fees or

(ii) If there is no loss of duties, taxes and fees 10 percent of the dutiable value of the merchandise; and

(2) For grossly negligent and negligent violations, the interest on any loss of duties, taxes and fees. The interest shall be computed from the date of liquidation at the prevailing rate of interest applied under section 6621, Internal Revenue Code of 1954, as amended (26 U.S.C. 6621).

(c) *Exception; clerical error or mistake of fact.* There is no violation and, consequently, no penalty incurred, if the falsity or omission is due solely to clerical error or mistake of fact, unless the error or mistake is part of the pattern of negligent conduct.

[T.D. 79-160, 44 FR 31958, June 4, 1979, as amended by T.D. 99-64, 64 FR 43267, Aug. 10, 1999]

§ 162.73a Penalties under section 593A, Tariff Act of 1930, as amended.

(a) *Maximum penalty without prior disclosure for a drawback compliance program nonparticipant.* If the person concerned has not made a prior disclosure as provided in § 162.74 and has not been certified as a participant in the drawback compliance program under part 191 of this chapter, the monetary penalty under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), cannot exceed:

(1) For fraudulent violations, three times the loss of revenue; and

(2) For negligent violations,